

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

30709

FILE: B-218011

DATE: March 13, 1985

MATTER OF: Sandia Die and Cartridge Company

DIGEST:

1. Agency properly may reject bid in response to surplus sale invitation that arrives at bid opening site after date and time set for bid opening due to apparent mishandling by U.S. Postal Service. Under applicable regulations the only excusable delay in submitting bid on surplus sale is that attributable to personnel in sales office.
2. Federal Acquisition Regulation applies to acquisition of supplies and services for and by use of the government, but not to sales of surplus property.

Sandia Die and Cartridge Company protests the rejection of its late bid for the purchase of two items of surplus government property. We deny the protest.

Sales invitation for bids (IFB) No. 31-5141 was issued by the Defense Logistics Agency's (DLA) Defense Property Disposal Service, Memphis, Tennessee. Sealed bids were scheduled for opening at 9 a.m. on January 9, 1985. DLA reports that the Defense Property Disposal Service sealed bid procedures require that a designated representative be at the post office substation and the communications center at the specified time, to assure receipt of all timely bids; the procedures were followed in this case. Sandia's bid, however, was not received in the sales office until 9:51 a.m. on January 10, 1985. The bid was returned unopened to Sandia on January 15, 1985, pursuant to paragraph C of the special sealed bid-term conditions, incorporated by reference into the IFB, which provides:

"C. Consideration of Late Bids, Modifications, or Withdrawals.

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"Bids and modifications or withdrawals thereof, must be in the possession of the Contracting Officer by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless [it was] received by the Contracting Officer prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Contracting Officer by the time and date set forth in the invitation for bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. . . ." (Emphasis added.)

Sandia contends that it mailed the bid by certified mail on January 4, 1985, and that the delay in arrival was the fault of the U.S. Postal Service. Sandia also refers to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7 (1984) and contends that under this section, if Sandia has a receipt to prove that its bid was mailed timely (5 days before bid opening) and if award has not been made, the bid must be considered.

Under the above-quoted language, it is clear that a bid or modification received by the contracting officer after the time set for bid opening can be considered only upon evidence establishing that it was in fact delivered to the place specified in the IFB, i.e., the sales office, in sufficient time to have been received by the sales contracting officer by the time set for bid opening. Even if Sandia's bid had been mailed in sufficient time for timely delivery under ordinary conditions, any delay while the bid was in the custody of the U.S. Postal Service affords no basis for relief, since Condition C only exempts delays attributable to personnel in the sales office. See Surplus Tire Sales, B-187322, Dec. 13, 1976, 76-2 CPD ¶ 479; Fred Schwartz, B-180462, Mar. 12, 1974, 74-1 CPD ¶ 131; B-170422, Sept. 23, 1970.

The FAR section concerning use of registered or certified mail applies to the acquisition of supplies and

services by and for the use of the federal government through purchase or lease; it does not apply to the sale of surplus government personal property by DLA. See FAR, 48 C.F.R. § 1.101. Rather, this matter is governed by the Defense Utilization and Disposal Manual, DOD 4160.21-M, September 1982. The agency's Sale by Reference pamphlet, which implements the manual, does not include a registered or certified mail exception for late bids.

Sandia contends that its late bid offers a higher price and therefore it is in the government's best interest to accept it. We disagree, since the maintenance of the integrity of the competitive bidding system is more in the government's best interest than the pecuniary advantage to be gained in a particular case. See Fred Schwartz, supra. Accordingly, the action taken by the sales office with regard to Sandia's late bid was proper and in accordance with the terms and conditions of the sales invitation.

We deny the protest.

for Seymour Efron
Harry R. Van Cleve
General Counsel